BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF TW TELECOM OF ARIZONA LLC FOR RESCISSION OF BOND REQUIREMENT CONTAINED IN ARIZONA CORPORATION COMMISSION DECISION NO. 70057 PURSUANT TO A.R.S. §40-252.

DOCKET NO. T-03943A-13-0357

APPLICATION

tw telecom of arizona llc ("tw telecom" or "Applicant") requests, pursuant to A.R.S. §40-252, rescission of the bond requirement in Arizona Corporation Commission ("Commission") Decision No. 70057.

BACKGROUND

tw telecom was certified by the Commission to provide intrastate telecommunications services in Arizona on December 14, 2000. *See* Decision No. 63262 (approving the tw telecom's acquisition of GST-AZ Net (AZ) and marking tw telecom's entry into the Arizona market). tw telecom is a leading provider of "last-mile" broadband data, voice, dedicated internet access, and dedicated web hosting to business customers in the Phoenix and Tucson metropolitan areas. tw telecom does not serve residential customers in Arizona.

When tw telecom was certified by the Commission in 2000, no bond was required by the Commission. Over the next four years, tw telecom operated with no bond and no significant consumer issues or inquiries by the Commission. In 2004, in Decision no. 67108, the Commission approved tw telecom's request to encumber assets and guarantee loan obligations, and in that decision required tw telecom to procure a $1.7 million performance bond to cover advances, deposits and prepayments. Decision 67108 p. 5-6. Between 2004 and December 2007, tw telecom received approval to guarantee debt of its parent twice (Decision No. 67815 and 68662), acquire the Xspedius Certified Subsidiaries (Decision No. 68958), and encumber its assets in connection with a financing (Decision No. 69392). The bond requirement continued between 2004 and 2007. Throughout this period, tw telecom's compliance with Commission regulations and orders was never at issue, the bond in place was never invoked, and no customer complaint brought into question tw telecom's conduct as a public service corporation. During this period, it was the general policy of the Commission to require a bond without a specific inquiry into the track record of the company.

In December of 2007, tw telecom applied for cancellation of certain merged subsidiary certificates, an asset transfer, and elimination of the performance bond. In response to this application, the Commission reduced the performance bond from $2.17 million (for all tw telecom subsidiaries) to $235,000, which was the standard performance bond required at the time for facilities based telecommunications carriers. See Decision No. 70057, pages 5-6. tw telecom has maintained the $235,000 bond as required by Decision No. 70057.

ANALYSIS

"In appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust." A.A.C. R14-2-1105(D). tw telecom is subject to the Arizona Competitive Telecommunications Services Rules, A.A.C. R14-2-1101-1115, and must comply with all rules applicable to the provision of intrastate telecommunications services under the terms of its certification. ACC Decision No. 63262, p.3, para. 7(l) (2000). While the Commission may require a performance bond prior to certification, for the reasons set forth below continuing this requirement for established competitive telecommunications companies is unnecessary, costly and ultimately leads to higher retail rates.

1. Excellent Record of Compliance

tw telecom has been certified in Arizona since 2000. Through-out this period tw telecom has complied with the requirements of its certification, including filing annual reports, funding the Arizona universal service, and seeking approval of the Commission, when required, of certain transactions or financings. Any complaints against tw telecom (or predecessor companies) have been resolved and closed with no formal litigation and without penalty to tw telecom. tw telecom has offices in Phoenix and Tucson, with over 800 route miles of network infrastructure owned and installed over the years in Arizona. tw telecom has a substantial presence in the State and is available to respond immediately to any questions or concerns regarding customer service.

The bond that tw telecom has had on file with the Commission (in varying amounts) for the last nine years has never been drawn upon or requested. Obtaining and maintaining this bond creates an expense for tw telecom and prevents tw telecom from using those resources to grow its network or reduce prices to customers.

2. The Bond Requirement Is Not Necessary or Reasonable.

The Commission "*may* require . . . the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers." A.A.C. R14-2-1105(D) (emphasis added). This rule was invoked by the Commission, as early as 2000, to protect consumers in the event a telecommunications carrier declared bankruptcy or abandoned service. *See, e.g.,* Decision No. 62751 (2000) (*Eschelon Telecom of Arizona CC&N Application*). At that time, many providers were new to Arizona and few carriers had invested in equipment and facilities. The new competitive local exchange carriers ("CLECs") did not have demonstrable operating histories, nor could they offer track records of customer satisfaction. During this period, a bond requirement was the vehicle selected by Commission Staff to protect consumers in the event a provider could not meet its legal obligations. Bonds were one way for the Commission to protect consumers from asset-less companies with few ties to Arizona.

Now, thirteen years later, the market is very different. Far fewer telecommunications companies remain, and most of those remaining have invested in Arizona. These CLECs individually own switches, equipment and fiber cable valued in the millions. It is no longer the case that customer deposits or advances are at risk if the company should declare bankruptcy or abandon service. If a company with assets seeks bankruptcy protection, either the company will reorganize and emerge from bankruptcy with manageable debt, or the provider's equipment and customer base (deposits and all) will be purchased out of bankruptcy. Indeed, customer deposits and advances are no more at risk with an established, facilities-based CLEC like tw telecom than they are with Qwest Corporation, Cox or Sprint – all of which operate in competition with facilities-based CLECs but carry no performance bonds benefiting the Commission.

Consistent with this lower risk of harm, is the national pattern of low or non-existent bond requirements for facilities-based CLEC providers. A survey of bond policies conducted for A.C.C. Docket No. T-03406A-99-0742 produced the following list of twenty-seven states that do not require a performance bond from a facilities based CLEC:

Alabama	Kansas	Montana	South Carolina
Arkansas	Kentucky	New Jersey	Texas
California	Maine	New Mexico	West Virginia
Georgia	Massachusetts	New York	Wyoming
Hawaii	Michigan	North Carolina	Washington
Indiana	Mississippi	Ohio	Wisconsin
Iowa	Missouri	Oregon	

Alaska requires a *de minimis* bond ($1,000-$5,000). It is evident that most states, including many with extensive CLEC telecommunications networks, do not see the need for a performance bond.

tw telecom has established through its investment in the state, and by its operating history, that customer deposits are not at risk. A bond is not necessary or reasonable given tw telecom's history of excellent compliance.

3. The Commission is Moving Towards Requiring Bond If Necessary

The Commission recently approved a carrier certification request without requiring a bond of the applicant. *See* TNCI Operating Company, LLC T-20882A-13-0108. In this case, Staff recommended no bond reflecting an appropriate reaction to changes in the competitive telecom market. Early in the advent of telecom competition, many companies applied for

CC&Ns and a large percentage of those companies ultimately left the market or were acquired. Today, fewer carriers apply to be certified and the certified companies are invested in Arizona. Companies like tw telecom, that have been providing service for many years, show no history of customer complaints or problems, and have the technical and managerial expertise to provide service, should not be required to post a bond.

CONCLUSION

The Commission "may at any time . . . alter or amend any or or decision made by it." A.R.S. §40-252. For the foregoing reasons, tw telecom respectfully requests an order cancelling the bond requirement in Decision No. 70057.

RESPECTFULLY SUBMITTED this 18th day of October 2013.

By:

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